

NO. \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DIVISION OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

SEP 22 2021

Cole, et.al., Plaintiffs

§  
§  
§  
§  
§

CIVIL ACTION NO.

4:14-cv-1698

Walter Ochsner, Clerk of Court

V.

Collier, et.al., Defendants

## MOTION FOR PRELIMINARY INJUNCTION

Petitioner asks this Honorable Court to GRANT a preliminary injunction against Defendants. Petitioner claims Defendants' actions in this matter are likely done in RETALIATION for this Honorable Court's previous rulings in this case.

## introduction

COMES NOW, James H. Gentry (Petitioner herein) pro-se INTERESTED PARTY in the above styled and numbered cause of action. Petitioner (TDCJ # 01521142) respectfully asks this Honorable Court to enjoin Defendants to return confiscated materials (19" papers) and also issue a subsequent storage container for storage of said materials and future "legal materials".

Petitioner alleges that Defendants confiscated - without proper cause - THOUSANDS of pages of "legal materials" (a significant portion of which is highly exculpatory evidence and Defendants also REFUSE to issue Petitioner a proper storage container in which to store the confiscated 19" papers" and also to store anticipated future additional "legal material."

Defendants' REFUSAL to grant Petitioner his repeated requests for an additional storage container in which to store "legal materials" has resulted in Petitioner being PERSECUTED with two disciplinary cases within the last few weeks: #202102389737 & 20210254844.

Petitioner has received **UNDESERVED PUNISHMENT** from Defendants by means of **restrictions** of his rights (for a total of 25 days) with (1) NO recreation and (2) NOT being allowed to purchase legal materials and supplies from the prison commissary.

Defendants have attempted to justify said confiscation by claiming the seized "**legal documents**" are, in fact, **PERSONAL PROPERTY** and, as such, were therefore **Improperly Stored**.

Petitioner's current housing assignment (B-5-14) does not contain adequate floor space in order to safely accommodate a second subsequent storage container. However, Pack Prison does include **AT LEAST ONE HUNDRED (100)** prison housing cubicles available which do have adequate floor space in which to store **safely** TWO (2) subsequent storage containers. Petitioner qualifies to be housed in **ANY** of those **One Hundred (100)** prison housing cubicles. which are currently available.

Petitioner ATTEMPTED to resolve this matter INFORMALLY, but said attempt was IGNORED. (See attached carbon copy of EXHIBIT # 1: YOU ARE DENYING ME ACCESS TO THE COURTS, DATED August 26, 2021 and sent to **DUTY WARDEN** Pack Prison.

#### ARGUMENT

Petitioner seeks to **enjoin** Defendants' agents and representatives from Prohibiting Petitioner access to several **THOUSAND** pages of "**legal materials**" (19" papers) and also from REFUSING to provide Petitioner with adequate storage containers in which to properly store said materials (19" papers). This activity infringes Petitioner's **constitutional right to ACCESS TO THE COURTS**. Therefore, there is a substantial likelihood that Petitioner will **prevail on the merits**. See Winter, 555 U.S. 7; Doran, 422 U.S. at 931; Sindicato..., 699 F. 3d at 10.

If the Court does not GRANT a preliminary injunction, Defendants will likely continue their activities that infringe Petitioner's **Access to Courts Constitutional Rights**.

Petitioner will likely suffer imminent and irreparable injury if the Court does not enjoin Defendants from refusing to provide Petitioner with the **THOUSANDS** of pages of evidence which will be used to support Petitioner's FIVE (5) APPLICATIONS FOR A WRIT OF HABEAS CORPUS in Texas trial court cases numbered:

199-81623(24)(25)(26)(27)-07

If Petitioner is NOT issued a subsequent storage container in which to store the currently confiscated "legal materials" (19" papers)) he will have NO WAY to store said materials without exposing himself to the likelihood of being charged with ADDITIONAL disciplinary cases - along with associated punishments - including withdrawal of prison potential rights and privileges.

Defendants' REFUSAL to provide Petitioner with a detailed listing of the materials confiscated may greatly reduce Petitioner's success when filing his FIVE (5) APPLICATIONS FOR A WRIT OF HABEAS CORPUS.

By simply "glancing" at a typed or written page, one CANNOT make an informed decision whether a particular page is PERSONAL PROPERTY or "legal material."

THE ONLY WAY to determine if the printed words on the page of paper are PERSONAL instead of "legal materials" is:  
The examining Defendant must - AT THE VERY LEAST - "scan" the words on the page. Defendants' own policy requires Defendants to obtain a Form I-186 SIGNED BY THE WARDEN to "scan" the suspect pages BEFORE beginning the examination of the suspect pages.

It is arbitrary, capricious and overreaching for Defendants to claim the pages examined (19" papers) are PERSONAL PROPERTY instead of "legal materials." Defendant's own rules provide that if Defendants suspect there may be written CONTRABAND, BEFORE they can "scan" each page to determine whether - or not - it is legal material - defendant must have a completed and signed by the Warden Form I-186 - Authorization to Search legal materials, BEFORE starting the scanning process. DEFENDANTS HAD NO SUCH AUTHORIZATION BEFORE SEARCHING PETITIONER'S (19" papers).

How can the LIBRARIAN III who examined Petitioner's 19" papers make an informed decision about whether the papers searched were PERSONAL PROPERTY or "legal materials" when she DID NOT possess a signed Form I-186 - Authorization to Search legal materials?

If she DID NOT SEARCH the 19" papers, she had NO WAY OF KNOWING whether they were PERSONAL PROPERTY or "legal materials."

On the other hand, if she DID SEARCH the 19" papers she VIOLATED TDCJ policy by not acquiring a Form I-186 before her search.

Either way, her search was contrary to the rules making the entire SEARCH process to be NULL AND VOID.

Furthermore, the charging officer LIBRARIAN III and the Officer V who she instructed to search a portion of Petitioner's papers, had have NEVER ~~be~~ filed a legal brief, nor been trained as a judge, nor been trained as an attorney nor ever had conducted themselves even as a PRO-SE LITIGANT. Therefore neither of those two TDCJ employees were QUALIFIED to conduct the purported search they claim they ~~conducted~~ conducted. They may very well have been trained to conduct a search for PHYSICAL CONTRABAND, but are not trained to conduct a search of legal materials for written CONTRABAND.

**BALANCE OF HARM**

If the preliminary injunction is NOT granted, the injury suffered by Petitioner will far outweigh any injury which might be suffered by Defendants when they return the confiscated 19" papers to Petitioner and also issue proper storage for **THOUSANDS** of confiscated pages now held by Defendants - **PLUS** potentially **MANY MORE THOUSANDS** of pages of **EXCULPATORY EVIDENCE** which will be gathered by Petitioner in the near future while he is preparing his **FIVE (5) APPLICATIONS FOR A WRIT OF HABEAS CORPUS**. If PETITIONER IS NOT issued an additional subsequent storage container, the prison employees will - quite likely - sooner or later <sup>File</sup> **MORE** disciplinary cases against Petitioner for "improper storage."

Defendants will **NOT** suffer undue hardship or loss as a result of the issuance of a preliminary injunction, the injury (if any) suffered by Defendants due to the "loss" of confiscated exculpatory evidence will be negligible while the injury to Petitioner might very well result in his remaining incarcerated for the balance of his natural life.

**LIBERTY INTEREST**

Petitioner Gentry has a constitutional right to **LIBERTY INTEREST** in this matter while Defendants do not have a **LIBERTY INTEREST**.

**POSTING BOND**

Petitioner is incarcerated and is indigent and cannot afford a bond payment.

**NOTICE TO DEFENDANTS**

Petitioner shall notify Defendants by U.S. mail, mailed the same day this **MOTION FOR PRELIMINARY INJUNCTION** is filed in this honorable Court. - by U.S. mail.

## HEARING

Petitioner PRAYS this Honorable Court hold a HEARING in order for Petitioner to PROVE that all (or a substantial part thereof) of what Defendants refer to as 19" papers are, in fact, "legal materials" and, as such, qualify Petitioner for the use of an additional subsequent storage container in which to properly store not only the 19" papers, but also future anticipated additional "Legal materials" AND so a Judge can make the determination of which pages are "legal materials" (court orders, court correspondence, briefs, offender grievances Step 1 and 2 responses, judgments, pleadings, transcripts, attorney correspondence, notes, drafts, etc. The material shall be reasonably necessary to support on-going, active litigation or anticipated litigation. Anticipated litigation shall show active progression.) TDCJ publication: OFFENDER PROPERTY AD-03.72 (rev.6).

How can an examiner determine if a page with typed or written words qualifies as "legalmaterial" without AT LEAST "scanning" the words on that page? According to Defendants' own rules, a person making a determination that the words on a specific page are, IN FACT "legal materials" must AT LEAST "scan" the words on the page. BEFORE anyone can "scan" words to try to determine if the words are "legal material, that person must have in possession a "Form I-186 (AUTHORIZATION TO SEARCH LEGAL MATERIALS) signed by the Warden. Said signed Form I-186 was NEVER acquired by the person(s) making the determination of the subject pages (19" papers) in this case.

Therefore, the examination was NOT done in accordance with TDCJ rules/regulations and is therefore (VOID).

~~UNQUALIFIED EXAMINER~~

~~Charging Officer LINARIAN~~ ~~enlisted the assistance of a~~  
 page 6 of 9

**UNQUALIFIED EXAMINER**

Charging Officer Librarian III enlisted the assistance of a Correctional Officer V to examine some of the property the Librarian III later claimed is PERSONAL PROPERTY even though the Correctional Officer V does not have the training or authority to make a determination if a particular page of printed words is "legal material" or PERSONAL PROPERTY - nor did the Correctional Officer V have a signed ~~XXXX~~ Form I-186 AUTHORIZATION TO SEARCH LEGAL MATERIALS in possession while making decisions regarding whether - or not - a particular page was "legal materials".

Defendants used the term PERSONAL PROPERTY as a PRETEXT to "cover up"/ "inhibit"/ "stall" and/or "preclude" Petitioner's ACCESS TO COURTS constitutional rights in this matter.

**THE PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST**

Petitioner can conceive of NO REASON why enjoining Defendants to return confiscated pages of "legal material" (19" papers) to Petitioner and also issuing one additional storage container in which to store said 19" papers, as well as future additional legal materials, would - in ANY WAY - violate the public interest.

**CONCLUSION**

Because Petitioner's current subsequent storage container is FULL of "legal materials"/ if the 19" papers would have been PROPERLY designated "legal material" Defendants would be REQUIRED by their own rules to issue Petitioner a second subsequent storage container to store 19" papers. ALSO see OFFENDER ORIENTATION HANDBOOK I-202 (rev. February 2017) - page 125 - II. A. "...Offenders have access to their legal materials on a daily basis". However, by claiming 19" papers are PERSONAL PROPERTY, Petitioner has had NO



ACCESS to 19" papers since August 26, 2021 which is more than twenty (20) days since he has been attempting to prepare his FIVE (5) APPLICATIONS FOR A WRIT OF HABEAS CORPUS without access to this highly exculpatory "legal material." By designating 19" papers as PERSONAL PROPERTY, Defendants ARE NOT REQUIRED to provide Petitioner DAILY ACCESS to the materials and also are not required to issue Petitioner a second subsequent storage container. Defendants also claim they are NOT required to return 19" papers to Petitioner.

Petitioner has shown this Honorable Court he qualifies to have confiscated property (19" papers) returned to him and to be issued a second subsequent storage container in which to store said Property because:

- (1) he is likely to succeed on the merits; and
- (2) suffer irreparable harm in the absence of preliminary relief before a decision on the merits can be rendered; and
- (3) the balance of equities tips in his favor; and
- (4) the injunction is in the public interest.

See: Winter, 555 U.S. 7; 129 SCT 365 (2008)

#### PRAAYER

Petitioner PRAYS this Honorable Court to enjoin Defendants herein to:

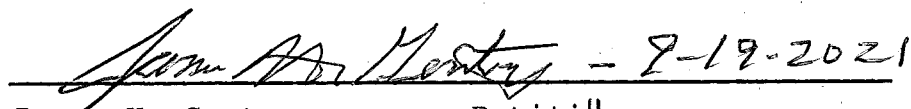
1. Return to Petitioner the 19" papers which they have confiscated from Petitioner and
2. Issue an additional subsequent storage container to Petitioner for his use in storing "legal materials" including the 19" papers and legal materials which will be acquired in the future; and
3. Re-assign Petitioner to a housing cubicle which has sufficient floor space to SAFELY accomodate two (2) subsequent storage containers; and
4. Replace the finding of GUILTY in the two above identified disciplinary cases to NOT GUILTY and remove the punishment assessed to Petitioner in each case.



**VERIFICATION AND CERTIFICATE OF SERVICE**

I, James H. Gentry, pro-se Petitioner herein, do hereby **CERTIFY** UNDER PENALTY OF PERJURY that the foregoing document **MOTION FOR PRELIMINARY INJUNCTION** is TRUE and CORRECT to the best of my knowledge and that a copy will be mailed to the Clerk of this Honorable court at 515 Rusk, Houston, Texas 77002 on this 19th day of September, 2021.

EXECUTED ON THIS 19th DAY OF SEPTEMBER, 2021

  
James H. Gentry, pro-se Petitioner  
TDCJ # 01521142  
Pack Prison  
2400 Wallace Pack Road  
Navasota, Texas 77868

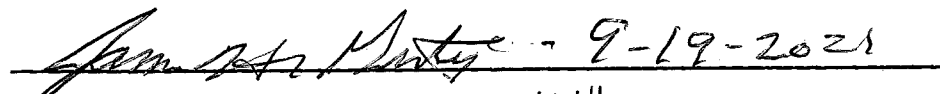
I, James H. Gentry, pro-se Petitioner herein, do hereby **CERTIFY** **NOTICE** of the filing of this **MOTION FOR PRELIMINARY INJUNCTION** will be mailed by FIRST CLASS MAIL to:

EXECUTIVE DIRECTOR BRYAN COLLIER  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
P.O. BOX 99  
Huntsville, Texas 77342-0099

and to:

Jeffrey S. Edwards  
Pack Unit Class Action  
The Edwards Law Firm  
1101 East 11th Street  
Austin, Texas 78702

EXECUTED ON THIS 19th DAY OF SEPTEMBER, 2021

  
James H. Gentry, pro-se Petitioner  
TDCJ # 01521142  
Pack Prison  
2400 Wallace Pack Road  
Navasota, Texas 77868

**PLAINTIFF GENTRY'S AFFIDAVIT OF LEGAL MATERIALS**

---

Cause no. 4:14-cv-1698

UNITED STATES DISTRICT COURT

James H. Gentry, Plaintiff § IN THE ~~199th JUDICIAL~~  
 V. § SOUTHERN DIVISION OF TEXAS  
 TDCJ, Brian Collier, Defendant § DISTRICT COURT OF  
 HOUSTON DIVISION  
 COLLIN COUNTY, TEXAS

United States Courts  
 Southern District of Texas  
 FILED

PLAINTIFF GENTRY'S AFFIDAVIT OF LEGAL MATERIALS

TO THE HONORABLE JUDGE OF SAID COURT:

SEP 22 2021

COMES NOW, James H. Gentry, Plaintiff in the above styled and numbered cause of action and presents this "AFFIDAVIT OF LEGAL MATERIALS". In support of this affidavit, Plaintiff will show the following:

Plaintiff has qualified for and received permission from the Pack Unit Administration to possess a "Subsequent Storage Container" to store and maintain legal materials and property. Plaintiff states under oath that the materials stored and maintained in the "legal box" are judgments, pleadings, transcripts, attorney correspondence, notes, drafts, and exhibits that are material to current or anticipated litigation. Most importantly, the legal materials are organized in chronological order, by subject matter, and identified as such with notations on the outside of each folder.

In order to maintain possession of the "subsequent storage container", inmates are required to undergo review every 90 days. A review of the 90 day period is anticipated to take place on or about August 20, 2021. Plaintiff is compelled to make this oath for the record whereas, in the past, TDCJ staff "weaponized" the 90 day review as a pretext in retaliation to seize legal materials, thereby stalling, impeding, precluding, hindering and otherwise undermining inmate litigation.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this PLAINTIFF GENTRY'S AFFIDAVIT OF LEGAL MATERIALS has been placed in the Pack Unit "grievance box" addressed to Warden Fidropotnick on the below date, and also mailed, via U.S. postal service, postage pre-paid to the Court in the above styled and numbered cause of action.

unsworn declaration

My date of birth was March 1, 1943 and my inmate number is 1521142. I am presently incarcerated in the TDCJ-ID Pack Unit, Navasota, Grimes County, Texas 77868. I declare, pursuant to 28 USC § 1746 that, the foregoing is true and correct under penalty of perjury

EXECUTED On the 11 day of August " 2021.

James H. Gentry - 8-11-2021

James H. Gentry, Plaintiff herein, TDCJ number 1521142  
Pack Prison  
2400 Wallace Pack Road  
Navasota, Texas 77868

James H. Gentry - 9-19-2021

**EXHIBIT # 1**

**YOU ARE DENYING ME ACCESS TO THE COURTS**

**(attempt for informal resolution)**

Thursday, August 26, 2021

TO: DUTY WARDEN  
Pack Prison

YOU ARE DENYING ME ACCESS TO THE COURTS

Earlier today at about 1000 hours your Pack Access to Courts supervisor A. Oliver confiscated several hundred pages of my "legal materials" during my daily morning law library session.

Even though I asked her for a listing of the files she was confiscating, she attempted to avoid the restrict ion on the PROP-08 (05/15) form by claiming what she was confiscating was NOT "legal material":

Section II: Confiscation Information: "(legal material shall not be confiscated using this form.)"

Instead of providing me a listing of the confiscated documents, she calimed the stack of papers she confiscated was 719 inches high." One of the files she confiscated was labeled:

2021 parole packet

Does that sound like "legal materials" to you? She says NOT.

Ms. Oliver further REFUSED to issue me another SUBSEQUENT STORAGE CONTAINER.

If you or your appointed representative do not contact me to attempt to informally resolve this issue, I plan to file:

EMERGENCY MOTION FOR DENIAL OF ACCESS TO COURTS AND RETALIATION  
AGAINST AN INTERESTED PARTY (and/or member of the class) in:

this court: Honorable Judge Keith P Ellison  
U S District Court  
SOUTHERN DISTRICT OF TEXAS (Houston)

CIVIL CASE NO. 4:14-cv-1698 Cole v Collier and ALSO in

CIVIL CASE NO. 4:20-cv-01115 Valentine v Collins

Cause: 28:1983 Civil Rights

If this issue is not resolved beforehand, I plan to deposit the above described "emergency motion" to Judge Ellison's court on or after 0300 hours on Monday, August 30, 2021 in the Pack Prison legal mail system.

I would much PREFER to resolve this matter informally prior to that date and time.

Respectfully Submitted,

Jaames H. Gentry  
TDCJ # 01521142  
Pack Prison  
HOUSING: B-5-14

*Jaames H. Gentry*

8-26-2021

*Jaames H. Gentry*  
9-19-21

EXHIBIT

#1

September 19, 2021

Clerk of the Court  
UNITED STATES DISTRICT COURT  
SOUTHERN DIVISION OF TEXAS  
HOUSTON DIVISION  
515 Rusk  
Houston, Texas 77002

United States Courts  
Southern District of Texas  
FILED

RE: Cause of Action Number 4:14-cv-1698  
**MOTION FOR PRELIMINARY INJUNCTION**

SEP 22 2021

DEAR CLERK:

Nathan Ochsner, Clerk of Court

Please find enclosed:

1. **MOTION FOR PRELIMINARY INJUNCTION**
2. **PLAINTIFF GENTRY'S AFFIDAVIT FOR LEGAL MATERIALS**
3. **Exhibit # 1 - YOU ARE DENYING ME ACCESS TO THE COURTS**
4. A carbon copy of this letter
5. A self-addressed, stamped envelope

Would you please:

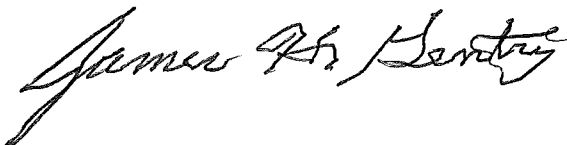
- A. File the items #1, #2, and #3 above in the above identified and numbered cause of action in your honorable Court; and
- B. "File Stamp" the enclosed carbon copy of this letter
- C. Mail said "file-stamped" carbon copy of this letter to me in the enclosed self-addressed, stamped envelope?

**THANK YOU FOR YOUR PROMPT AND EFFICIENT SERVICE IN THIS MATTER**  
Respectfully Requested,



James H. Gentry, pro-se  
TDCJ # 01521142  
Pack Prison  
2400 Wallace Pack Road  
Navasota, Texas 77868

EXECUTED ON THIS 19 DAY OF SEPTEMBER, 2021

 9-19-21



September 19, 2021

Clerk of the Court  
UNITED STATES DISTRICT COURT  
SOUTHERN DIVISION OF TEXAS  
HOUSTON DIVISION  
515 Rusk  
Houston, Texas 77002

RE: Cause of Action Number 4:14-cv-1698  
MOTION FOR PRELIMINARY INJUNCTION

DEAR CLERK:

Please find enclosed:

1. MOTION FOR PRELIMINARY INJUNCTION
2. PLAINTIFF GENTRY'S AFFIDAVIT FOR LEGAL MATERIALS
3. Exhibit # 1 - YOU ARE DENYING ME ACCESS TO THE COURTS
4. A carbon copy of this letter
5. A self-addressed, stamped envelope

Would you please:

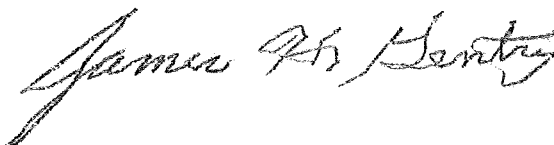
- A. File the items #1, #2, and #3 above in the above identified and numbered cause of action in your honorable Court; and
- B. "File Stamp" the enclosed carbon copy of this letter
- C. Mail said "file-stamped" carbon copy of this letter to me in the enclosed self-addressed, stamped envelope?

THANK YOU FOR YOUR PROMPT AND EFFICIENT SERVICE IN THIS MATTER  
Respectfully Requested,



James H. Gentry pro-se  
TDCJ # 01521142  
Pack Prison  
2400 Wallace Pack Road  
Navasota, Texas 77868

EXECUTED ON THIS 19 DAY OF SEPTEMBER 2021



9-19-21

Gentry, James H - 1521142  
Pack Anson  
2400 Wallace Pack Road  
Navasota, TX 77868

LEGAL  
MAIL

UNITED STATES DISTRICT COURT  
SOUTHERN DIVISION OF TEXAS  
HOUSTON DIVISION  
515 Rusk  
Houston TX 77002

Matthew Ochsner, Clerk of Court

United States Courts  
Southern District of Texas  
FILED

SEP 22 2021

